IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 153 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANOJKUMAR @ BOBI KISHANLAL BHARDVAJ

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 153 of 2004

MS B S DUTTA FOR MR AR SHAIKH for Petitioner No. 1

MS MITA S PANCHAL AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 28/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this

petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 20/11/03 passed by respondent no.2 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that three F.I.Rs. were registered against him for offences punishable u/s.379, 467, 468 and 114 of the I.P.C. and that he had committed theft in respect of motor vehicles. It was also alleged against the petitioner that two witnesses had given statements against the petitioner.

3. On the strength of the aforesaid three registered offences and two statements of unnamed witnesses, the detaining authority found the petitioner to be a "dangerous person" and with a view to prevent him from continuing his illegal activities, the impugned order of detention was passed against the petitioner.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that on a mere fact that some offences were registered, it could not be said that the activities of the petitioner would lead to a threat to public order. It has also been contended that the names of the witnesses were not disclosed to the petitioner, and therefore, the valuable right of the petitioner to make an effective representation against his detention has been denied. That, therefore, the order of detention is illegal and hence, it may be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

6. At the final hearing, the learned advocate for the petitioner argues that the petitioner in this petition and the petitioner in S.C.A.No.17463/2003, were co-accused in all the three offences registered against them. It is also her argument that the witnesses who have rendered statements against the petitioner are also the witnesses who have rendered statements against the petitioner in S.C.A.No.17463/2003 and that the witnesses are common and their statements are also common. Therefore, it is her argument that the case of the petitioner is on par with the case of the petitioner in

S.C.A.No.17463/2003. That, therefore, when the said S.C.A. has been allowed and the order of detention has been quashed and set aside, then on the principle of parity, this petition may also be allowed and the order of detention may be quashed and set aside.

7. On hearing, it is found that the learned advocate for the petitioner is right in saying that the present petitioner and the petitioner in the aforesaid S.C.A. are co-accused and the statements relied upon by the detaining authority are also common and therefore, they are on par. In that view of the matter, when the petitioner in S.C.A.No.17463/2003 has been released by holding his detention order to be illegal, then the same treatment is also required to be extended to the present petitioner, by applying the principle of parity. Therefore, the present petitioner is also required to be allowed.

8. For the foregoing reasons, this petition is allowed. The impugned order of detention dated 20/11/03 passed by respondent no.2 against the petitioner, is ordered to be quashed and set aside. Detenu, Manojkumar @ Bobi Kishanlal Bhardvaj, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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